

September 14, 2017

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Secretary DeVos:

We write regarding the inaccurate claims of authority the U.S. Department of Education (“the Department”) made in its letter dated August 31, 2017, terminating two Memorandums of Understanding (MOUs) with the Consumer Financial Protection Bureau (CFPB).<sup>1</sup> The justifications the Department provided in revoking these agreements reflect a fundamental misunderstanding of both its authority and that of other federal agencies. While the Department does have authority to administer the federal student loan programs, that authority is not exclusive and has been intentionally constrained by law due to the Department’s historical negligence in carrying out many of its oversight responsibilities over federal student loan servicers. Without CFPB oversight, we are deeply concerned this backward step will allow student loan servicers to more easily take advantage of borrowers.

The August 31<sup>st</sup> letter states: “*The Department takes exception to the CFPB unilaterally expanding its oversight role to include the Department’s contracted federal loan servicers. The Department has full oversight responsibility for federal student loans*” and “*...the CFPB is using the Department’s data to expand its jurisdiction into areas that Congress never envisioned.*”<sup>2</sup>

These assertions are false. Multiple federal regulators and law enforcement agencies serve important roles overseeing companies that contract with the Department to service federal student loans. Federal student loan servicers are subject to periodic reporting requirements, regulation, and oversight by the Securities and Exchange Commission.<sup>3</sup> In fact, the largest student loan servicer in the United States, Navient, noted in its most recent quarterly report that the company and its subsidiaries are “subject to examination or regulation by the SEC, CFPB, FDIC (Federal Deposit Insurance Corporation) and ED (U.S. Department of Education), as well as various state agencies as part of its ordinary course of business.”<sup>4</sup> Furthermore, as creditors to servicemembers, student loan servicers are subject to oversight and enforcement actions by the U.S. Department of Justice for violations of the Servicemembers Civil Relief Act (SCRA).<sup>5</sup> In

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<sup>1</sup> U.S. Department of Education. “Letter to CFPB Signed by Kathleen Smith and A. Wayne Johnson.” Received by Richard Cordray, CFPB. 31 Aug. 2017. Washington, D.C.

<sup>2</sup> Ibid.

<sup>3</sup> 15 U.S.C. § 78m-1

<sup>4</sup> Lown, Christian. *Navient Corporation*. Commission File Number, ser. 001-36228, *Navient Corporation*

<sup>5</sup> 50 U.S.C. app. §§ 501 et seq.

2014, the CFPB joined the U.S. Department of Justice and the Federal Deposit Insurance Corporation to secure a \$60 million settlement to resolve allegations that Navient systematically overcharged servicemembers on their student loans.<sup>6</sup> In addition, state attorneys general and other state-based consumer protection entities regularly conduct investigations and enforcement actions on a bipartisan basis to protect students in their states from illegal activities and misconduct of federal loan servicers.

In 2010, after a financial crisis caused in large part by a failure to appropriately protect consumers, Congress passed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (“Dodd-Frank Act”), establishing the CFPB and giving it clear authorities to enforce federal consumer protection laws and supervise banks and non-banks that provide financial services, including student loan servicers and debt collectors.<sup>7</sup> Section 1024 of the Act instructs the CFPB to identify large non-bank financial companies that pose risks to consumers so that they may supervise and examine them. In 2013, the CFPB worked in consultation with the Department to finalize a rule related to large participants in the student loan servicing market, which covered a number of federal student loan servicers.<sup>8</sup>

The Department’s contracted federal student loan servicers are also subject to other federal consumer financial protection laws over which the CFPB was given rulemaking and enforcement authority in the *Dodd-Frank Act*, such as the *Fair Debt Collection Practices Act* and the *Fair Credit Reporting Act*.<sup>9</sup> Section 1031 of this law authorizes the CFPB to use its enforcement powers to prevent consumer financial services providers, like the Department’s contracted federal student loan servicers, from engaging in unfair, deceptive, or abusive practices.<sup>10</sup>

Congress also established a Student Loan Ombudsman at the CFPB whose responsibilities include working with the Department to “resolve complaints related to [borrowers’] private education or federal student loans” and is specifically instructed to enter into a MOU with the Department in order to do so.<sup>11</sup> Contrary to the Department’s assertion, Congress has not exempted companies that service or collect on federal student loans from any consumer financial protection law.

Since the CFPB was established, it has cooperated with other federal agencies, including the Department, to ensure that students and borrowers are protected from harmful financial practices and are able to benefit from programs that reduce default and delinquency. In 2016, the Department, the U.S. Department of the Treasury, and the CFPB engaged in a joint effort to standardize student loan servicing expectations and modernize credit reporting for student

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<sup>6</sup> “Justice Department Reaches \$60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans.” U.S. Department of Justice. 13 May 2014. [www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging](http://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging).

<sup>7</sup> 12 U.S. Code § 5491

<sup>8</sup> United States, Congress, *Defining Larger Participants of Certain Consumer Financial Product and Service Markets*. Vol. 9, Title 12 - Banks and Banking, 2017.

<sup>9</sup> 12 U.S. Code § 5492

<sup>10</sup> 12 U.S. Code § 5531

<sup>11</sup> 12 U.S. Code § 5535

loans.<sup>12</sup> The CFPB also worked with the Department to create a model financial aid disclosure form to make borrowing costs clearer to students.<sup>13</sup> And, the Department specifically consulted with the CFPB in developing rules to protect students from predatory debit and prepaid cards that they may use to receive federal financial aid.<sup>14</sup>

Cooperation among federal agencies is crucial to overseeing approximately \$130 billion in federal financial aid the Department disperses annually and the more than \$1 trillion it manages in its federal student loan portfolio.<sup>15</sup> Our country's investment in affordable higher education provides individuals with the skills they need to participate in the 21<sup>st</sup> century economy. Cooperative oversight of this investment in higher education helps to safeguard students, borrowers, and taxpayers. Unfortunately, the Department's recent actions to abandon cooperation with the CFPB come during a time when it is also systematically rolling back rules meant to protect students and making numerous questionable personnel decisions, which cast doubt on assertions that the Department is focusing on consumer protection.<sup>16</sup>

Neither federal student loans nor their servicers are beyond the reach of state and federal consumer protection laws or the federal agencies and state entities that have regulatory, enforcement, and supervisory jurisdiction over them. Thus, we request the Department follow Congressional intent and reverse its rescission of the MOUs with the CFPB dated October 19, 2011 and January 9, 2014. Students and borrowers cannot afford to see these protections rolled back. Cooperation between the Department and CFPB is in the best interest of students, borrowers, and taxpayers and the Department's decision to abandon this partnership is contrary to its stated mission to "ease the burden for borrowers."<sup>17</sup>

Further, we request the Department provide us by September 29, 2017 with:

1. Any communications, including e-mails and records of telephone conversations, with the CFPB, its staff, or any agents thereof, where the Department identified concerns with or breaches of the information-sharing arrangements under the MOUs.
2. Any data, analysis, documentation or other work product that supports the Department's claim that the CFPB has taken any action that exceeds its authorities.

<sup>12</sup> "Departments of Education and Treasury and the Consumer Financial Protection Bureau Announce New Joint Efforts to Protect and Support Student Loan Borrowers," U. S. Department of Education, 28 Apr. 2016 <http://www.ed.gov/news/press-releases/departments-education-and-treasury-and-consumer-financial-protection-bureau-announce-new-joint-efforts-protect-and-support-student-loan-borrowers>

<sup>13</sup> "CFPB and Department of Education Partner on New Financial Aid Shopping Sheet," Consumer Financial Protection Bureau, 25 Oct. 2011, [www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-department-of-education-partner-on-new-financial-aid-shopping-sheet/](http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-and-department-of-education-partner-on-new-financial-aid-shopping-sheet/)

<sup>14</sup> U.S. Department of Education; Program Integrity and Improvement; Final Rules, 80 Fed. Reg. 67,145, codified at 34 C.F.R. Pt. 668, 30 Oct. 2015

<sup>15</sup> U.S. Department of Education, Federal Student Aid: "Annual Report FY 2016." 2016. <https://studentaid.ed.gov/sa/sites/default/files/FY-2016-Annual-Report.pdf>

<sup>16</sup> Stratford, M. (2017, August 31). Trump and DeVos fuel a for-profit college comeback. Politico. Retrieved from <http://www.politico.com/story/2017/08/31/devos-trump-forprofit-college-education-242193>

<sup>17</sup> U.S. Department of Education. "Letter to CFPB Signed by Kathleen Smith and A. Wayne Johnson." Received by Richard Cordray, CFPB, 31 Aug. 2017. Washington, D.C.

3. Any communications, including e-mails and records of telephone conversations, with federal education loan servicers, their staff or any agents thereof, regarding the content of the August 31, 2017 letter to the CFPB.
4. Any policies, plans, or procedures the Department has to increase oversight of federal student loan servicers and to monitor potential violations of consumer protection law identified by borrower complaints until the MOUs are replaced or reinstated in order to come into compliance with legal requirements for interagency agreement.

Sherrod Brown  
United States Senator

Sincerely,

Maxine Waters  
Member of Congress

Patty Murray  
United States Senator

Suzanne Bonamici  
Member of Congress

Elizabeth Warren  
United States Senator

Robert C. "Bobby" Scott  
Member of Congress

Richard J. Durbin  
United States Senator

Carolyn Maloney  
Member of Congress

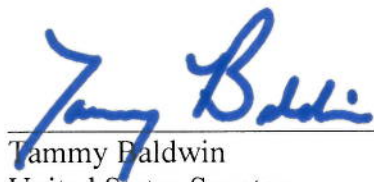
Al Franken  
United States Senator

Carol Shea-Porter  
Member of Congress

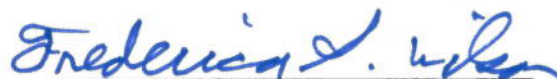
Jack Reed  
United States Senator

Nydia M. Velázquez  
Member of Congress





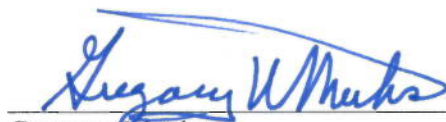
Tammy Baldwin  
United States Senator



Frederica S. Wilson  
Member of Congress



Sheldon Whitehouse  
United States Senator



Gregory Meeks  
Member of Congress



Kamala D. Harris  
United States Senator



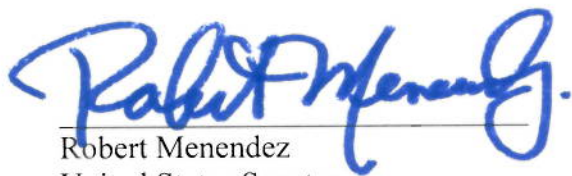
Mark Takano  
Member of Congress



Margaret Wood Hassan  
United States Senator



Michael Capuano  
Member of Congress



Robert Menendez  
United States Senator



Marcia L. Fudge  
Member of Congress



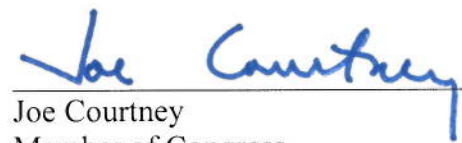
Bernard Sanders  
United States Senator



Mark DeSaulnier  
Member of Congress



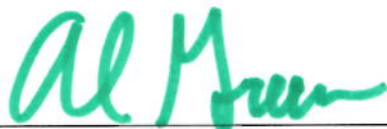
Wm. Lacy Clay  
Member of Congress



Joe Courtney  
Member of Congress



David Scott  
Member of Congress



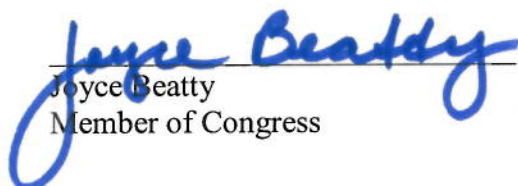
Al Green  
Member of Congress



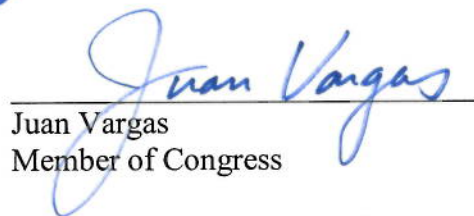
Gwen Moore  
Member of Congress



Keith Ellison  
Member of Congress



Joyce Beatty  
Member of Congress



Juan Vargas  
Member of Congress



Ruben J. Kihuen  
Member of Congress

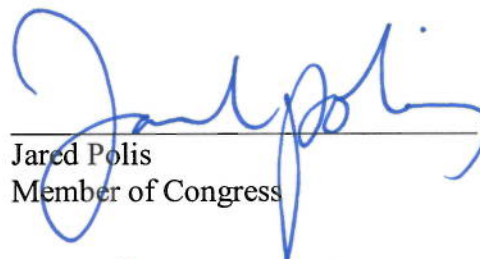
CC:

Kathleen Smith, Acting Assistant Secretary, Office of Postsecondary Education


Dr. A. Wayne Johnson, Chief Operating Officer, Office of Federal Student Aid, U.S. Department of Education



Susan Davis  
Member of Congress



Jared Polis  
Member of Congress



Adriano Espaillat  
Member of Congress



Daniel T. Kildee  
Member of Congress



Denny Heck  
Member of Congress



Vicente Gonzalez  
Member of Congress